

LEGISLATURE OF NEBRASKA  
NINETY-SIXTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 843**

Introduced by Lynch, 13; Connealy, 16; Robak, 22

Read first time January 20, 1999

Committee: Revenue

A BILL

1 FOR AN ACT relating to ethanol; to amend sections 66-1344 to  
2 66-1345.02, Reissue Revised Statutes of Nebraska; to  
3 change provisions relating to production credits, funding  
4 of credits, and excise tax amounts; and to repeal the  
5 original sections.  
6 Be it enacted by the people of the State of Nebraska,

1                   Section 1. Section 66-1344, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3                   66-1344. (1) Each producer of ethanol shall receive a  
4 credit pursuant to this section of twenty cents per gallon of  
5 ethanol produced in Nebraska, which credit shall be in the form of  
6 a nonrefundable transferable motor vehicle fuel tax credit  
7 certificate. After July 1, 1994, no such credit shall be given for  
8 ethanol produced at an ethanol facility which was in production on  
9 or before January 1, 1992, unless on or before July 1, 1994, the  
10 name plate design capacity for the production of ethanol, before  
11 denaturing, at the facility has been expanded to equal at least two  
12 times the name plate design capacity for production of ethanol,  
13 before denaturing, existing at the facility as of January 1, 1992.

14                   (2) Any ethanol facility which is in production at the  
15 rate of at least twenty-five percent of its name plate design  
16 capacity for the production of ethanol, before denaturing, on or  
17 before December 31, 1992, shall receive a credit of twenty cents  
18 per gallon of ethanol produced beginning with the first month for  
19 which it is eligible to receive such credit and ending not later  
20 than December 31, 1997.

21                   (3) Any ethanol facility which is not in production on or  
22 before December 31, 1992, but which is in production at the rate of  
23 at least twenty-five percent of its name plate design capacity for  
24 the production of ethanol, before denaturing, on or before December  
25 31, 1995, shall receive a credit of twenty cents per gallon of  
26 ethanol produced for sixty months beginning with the first month  
27 for which it is eligible to receive such credit and ending not  
28 later than December 31, 2000, if the ethanol facility maintains an

1 average production rate of at least twenty-five percent of its name  
2 plate design capacity for at least six months after the first month  
3 for which it is eligible to receive such credit.

4 (4) Any ethanol facility eligible for a credit under  
5 subsection (1), (2), or (3) of this section shall also receive a  
6 credit of twenty cents per gallon of ethanol produced in excess of  
7 the original name plate design capacity which results from  
8 expansion of the facility completed on or before December 31, 1995.  
9 Such credit shall be for sixty months beginning with the first  
10 month for which production from the expanded facility is eligible  
11 to receive such credit and ending not later than December 31, 2000.

12 (5) Upon the expiration of the sixty-month period set  
13 forth in subsections (3) and (4) of this section, any ethanol  
14 facility previously eligible for credits under subsections (3) and  
15 (4) shall also receive a credit of ten cents per gallon of ethanol  
16 produced through December 31, 2004, if the ethanol facility  
17 maintains an average production rate of at least twenty-five  
18 percent of its name plate design capacity.

19 (6) The credits described in this section ~~The credit~~  
20 shall be given only for ethanol produced at a plant in Nebraska at  
21 which all fermentation, distillation, and dehydration takes place.  
22 No credit shall be given on ethanol produced for or sold for use in  
23 the production of distilled spirits. ~~Not less than two million~~  
24 ~~gallons and not~~ more than twenty-five million gallons of ethanol  
25 produced annually at an ethanol facility shall be eligible for the  
26 ~~credit~~ credits in this section, and the ~~credit~~ credits may only be  
27 claimed by a producer for the ~~period~~ periods specified in  
28 subsection (2), (3), ~~or~~ (4), or (5) of this section. Not more than

1 one hundred twenty-five million gallons of ethanol produced at an  
2 ethanol facility by the end of the sixty-month period set forth in  
3 subsection (3) or (4) of this section shall be eligible for the  
4 credit under such subsections. ~~subsection, in addition to the~~  
5 ~~ethanol entitled to credit under subsection (1) or (2) of this~~  
6 ~~section.~~

7 ~~(6)~~ (7) The Department of Revenue shall prescribe an  
8 application form and procedures for claiming ~~the credit and shall~~  
9 ~~adopt and promulgate rules and regulations to carry out credits~~  
10 under this section.

11 (8) ~~(7)~~ For purposes of ascertaining the correctness of  
12 any application for claiming the credit provided in this section,  
13 the Tax Commissioner (a) may examine or cause to have examined, by  
14 any agent or representative designated by him or her for that  
15 purpose, any books, papers, records, or memoranda bearing upon such  
16 matters, (b) may by summons require the attendance of the person  
17 responsible for rendering the application or other document or any  
18 officer or employee of such person or the attendance of any other  
19 person having knowledge in the premises, and (c) may take testimony  
20 and require proof material for his or her information, with power  
21 to administer oaths or affirmations to such person or persons. The  
22 time and place of examination pursuant to this subsection shall be  
23 such time and place as may be fixed by the Tax Commissioner and as  
24 are reasonable under the circumstances. In the case of a summons,  
25 the date fixed for appearance before the Tax Commissioner shall not  
26 be less than twenty days from the time of service of the summons.  
27 No taxpayer shall be subjected to unreasonable or unnecessary  
28 examinations or investigations. All records obtained pursuant to

1 this subsection shall be subject to the confidentiality  
2 requirements and exceptions thereto as provided in section  
3 77-27,119.

4 Sec. 2. Section 66-1345, Reissue Revised Statutes of  
5 Nebraska, is amended to read:

6 66-1345. (1) There is hereby created the Ethanol  
7 Production Incentive Cash Fund which shall be used by the board to  
8 pay the credits created in section 66-1344 to the extent provided  
9 in this section. Any money in the fund available for investment  
10 shall be invested by the state investment officer pursuant to the  
11 Nebraska Capital Expansion Act and the Nebraska State Funds  
12 Investment Act. The State Treasurer shall transfer to the Ethanol  
13 Production Incentive Cash Fund such money as shall be (a)  
14 appropriated to the Ethanol Production Incentive Cash Fund by the  
15 Legislature, (b) given as gifts, bequests, grants, or other  
16 contributions to the Ethanol Production Incentive Cash Fund from  
17 public or private sources, (c) made available due to failure to  
18 fulfill conditional requirements pursuant to investment agreements  
19 entered into prior to April 30, 1992, (d) received as return on  
20 investment of the Ethanol Authority and Development Cash Fund, (e)  
21 credited to the Ethanol Production Incentive Cash Fund from the  
22 fertilizer fee pursuant to section 77-4401, (f) credited to the  
23 Ethanol Production Incentive Cash Fund from the excise taxes  
24 imposed by section 66-1345.01, and (g) credited to the Ethanol  
25 Production Incentive Cash Fund pursuant to section 66-1345.04.

26 (2) The Department of Revenue shall, at the end of each  
27 calendar quarter, notify the State Treasurer of the amount of motor  
28 fuel tax that was not collected in the preceding calendar quarter

1 due to the credits provided in section 66-1344. The State  
2 Treasurer shall transfer from the Ethanol Production Incentive Cash  
3 Fund to the Highway Trust Fund an amount equal to such credits less  
4 the following amounts:

5 (a) For 1993, 1994, and 1995, the amount generated during  
6 the calendar quarter by a one-cent tax on motor fuel pursuant to  
7 sections 66-489, 66-668, and 66-6,107;

8 (b) For 1996, the amount generated during the calendar  
9 quarter by a three-quarters-cent tax on motor fuel pursuant to such  
10 sections;

11 (c) For 1997, the amount generated during the calendar  
12 quarter by a one-half-cent tax on motor fuel pursuant to such  
13 sections; and

14 (d) For 1998, 1999, and 2000, no reduction.

15 The amounts shall be transferred through December 31,  
16 2000. For 1993 through 1997, if the amount generated pursuant to  
17 subdivisions (a), (b), and (c) of this subsection and the amount  
18 transferred pursuant to subsection (1) of this section are not  
19 sufficient to fund the credits provided in section 66-1344, then  
20 the credits shall be funded through the Ethanol Production  
21 Incentive Cash Fund but shall not be funded through either the  
22 Highway Cash Fund or the Highway Trust Fund. For 1998, 1999, and  
23 2000, the credits provided in such section shall be funded through  
24 the Ethanol Production Incentive Cash Fund but shall not be funded  
25 through either the Highway Cash Fund or the Highway Trust Fund.

26 (3) The State Treasurer shall transfer from the Ethanol  
27 Production Incentive Cash Fund to the Management Services Expense  
28 Revolving Fund the amount reported under subsection (4) of section

1 66-1345.02 for each calendar quarter of the fiscal year as provided  
2 in such subsection.

3 (4) On February 15, ~~2001~~ 2005, the State Treasurer shall  
4 transfer any unexpended and unobligated funds from the Ethanol  
5 Production Incentive Cash Fund to the Nebraska Corn Development,  
6 Utilization, and Marketing Fund and Grain Sorghum Development,  
7 Utilization, and Marketing Fund in the same proportion as funds  
8 were collected pursuant to section 66-1345.01 from corn and grain  
9 sorghum.

10 Sec. 3. Section 66-1345.01, Reissue Revised Statutes of  
11 Nebraska, is amended to read:

12 66-1345.01. An excise tax is levied upon all corn and  
13 grain sorghum sold through commercial channels in Nebraska or  
14 delivered in Nebraska. ~~The tax is three-fourths cent per bushel~~  
15 ~~for corn and three-fourths cent per hundredweight for grain~~  
16 ~~sorghum.~~ For any sale or delivery of corn or grain sorghum  
17 occurring on or after July 1, 1995, and before January 1, 2000, the  
18 tax is three-fourths cent per bushel for corn and three-fourths  
19 cent per hundredweight for grain sorghum. For any sale or delivery  
20 of corn or grain sorghum occurring on or after January 1, 2000, and  
21 before January 1, 2003, the tax is one-half cent per bushel for  
22 corn and one-half cent per hundredweight for grain sorghum. For  
23 any sale or delivery of corn or grain sorghum occurring on or after  
24 January 1, 2003, and before January 1, 2005, the tax is one-quarter  
25 cent per bushel for corn and one-quarter cent per hundredweight for  
26 grain sorghum. The tax shall be in addition to any fee imposed  
27 pursuant to sections 2-3623 and 2-4012. ~~The excise tax shall be~~  
28 ~~imposed on any sale or delivery occurring on or after July 1, 1995,~~

1 ~~and before January 1, 2001.~~ The Legislature finds and declares  
2 that those in production agriculture have contributed sufficiently  
3 to support the Ethanol Production Incentive Cash Fund by the  
4 imposition of the excise tax. If additional funds are needed in  
5 the future to meet the Legislature's obligation to fully fund the  
6 Ethanol Production Incentive Cash Fund, those funds should come  
7 from sources other than production agriculture.

8           The excise tax shall be imposed at the time of sale or  
9 delivery and shall be collected by the first purchaser. The tax  
10 shall be collected, administered, and enforced in conjunction with  
11 the fees imposed pursuant to sections 2-3623 and 2-4012. The tax  
12 shall be collected, administered, and enforced by the Department of  
13 Agriculture. No corn or grain sorghum shall be subject to the tax  
14 imposed by this section more than once.

15           In the case of a pledge or mortgage of corn or grain  
16 sorghum as security for a loan under the federal price support  
17 program, the excise tax shall be deducted from the proceeds of such  
18 loan at the time the loan is made. If, within the life of the loan  
19 plus thirty days after the collection of the excise tax for corn or  
20 grain sorghum that is mortgaged as security for a loan under the  
21 federal price support program, the grower of the corn or grain  
22 sorghum so mortgaged decides to purchase the corn or grain sorghum  
23 and use it as feed, the grower shall be entitled to a refund of the  
24 excise tax previously paid. The refund shall be payable by the  
25 department upon the grower's written application for a refund. The  
26 application shall have attached proof of the tax deducted.

27           The excise tax shall be deducted whether the corn or  
28 grain sorghum is stored in this or any other state. The excise tax



1 shall not apply to the sale of corn or grain sorghum to the federal  
2 government for ultimate use or consumption by the people of the  
3 United States when the State of Nebraska is prohibited from  
4 imposing such tax by the Constitution of the United States and laws  
5 enacted pursuant thereto.

6           Sec. 4. Section 66-1345.02, Reissue Revised Statutes of  
7 Nebraska, is amended to read:

8           66-1345.02. (1) The first purchaser, at the time of sale  
9 or delivery, shall retain the excise tax as provided in section  
10 66-1345.01 and shall maintain the necessary records of the excise  
11 tax for each sale or delivery of corn or grain sorghum. Records  
12 maintained by the first purchaser shall provide (a) the name and  
13 address of the seller or deliverer, (b) the date of the sale or  
14 delivery, (c) the number of bushels of corn or hundredweight of  
15 grain sorghum sold or delivered, and (d) the amount of excise tax  
16 retained on each sale or delivery. The records shall be open for  
17 inspection and audit by authorized representatives of the  
18 Department of Agriculture during normal business hours observed by  
19 the first purchaser.

20           (2) The first purchaser shall render and have on file  
21 with the department by the last day of each January, April, July,  
22 and October on forms prescribed by the department a statement of  
23 the number of bushels of corn and hundredweight of grain sorghum  
24 sold or delivered in Nebraska. At the time the statement is filed,  
25 the first purchaser shall pay and remit to the department the  
26 excise tax.

27           (3) The department shall remit the excise tax collected  
28 to the State Treasurer for credit to the Ethanol Production

1 Incentive Cash Fund within thirty days after the end of each  
2 quarter.

3 (4) For each fiscal year beginning with fiscal year  
4 1995-96 through fiscal year ~~2000-01~~ 2004-05, the department shall  
5 calculate its costs in collecting and enforcing the excise tax  
6 imposed by section 66-1345.01 and shall report such costs to the  
7 Department of Administrative Services within thirty days after the  
8 end of the fiscal year. Sufficient funds to cover such costs shall  
9 be transferred from the Ethanol Production Incentive Cash Fund to  
10 the Management Services Expense Revolving Fund at the end of each  
11 calendar quarter. Funds shall be transferred upon the receipt of a  
12 report of costs incurred by the Department of Agriculture for the  
13 previous calendar quarter by the Department of Administrative  
14 Services.

15 Sec. 5. Original sections 66-1344 to 66-1345.02, Reissue  
16 Revised Statutes of Nebraska, are repealed.